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**Policy issues: Coordination and cooperation within and
outside the United Nations, including non-governmental
organizations**

**POLICY RESPONSES OF THE UNITED NATIONS ENVIRONMENT PROGRAMME TO
TACKLE EMERGING ENVIRONMENTAL PROBLEMS**

Report of the Executive Director

Addendum

Report on the implementation of the Programme for the Development and Periodic Review of
Environmental Law for the First Decade of the Twenty-first Century
(Montevideo Programme III)

Introduction

At its twenty-first session, the Governing Council/Global Ministerial Environment Forum, in its decision 21/23 of 9 February 2001, unanimously adopted the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century (Montevideo Programme III), as the broad strategy for the activities of the United Nations Environment Programme (UNEP) in the field of environmental law for the first decade of the twenty-first century. The Governing Council requested the Executive Director to implement the Programme, within available resources, through the programme of work of UNEP and in close cooperation with international organizations, non-State actors and persons. The present report describes UNEP activities in the context of the implementation of the above decision and in the light of the outcomes of the World Summit on Sustainable Development.

* UNEP/GC/22/1.

I. IMPLEMENTATION OF THE JOHANNESBURG PRINCIPLES: FOLLOW UP TO THE OUTCOME OF THE GLOBAL JUDGES' SYMPOSIUM

1. The Executive Director convened the Global Judges' Symposium on Sustainable Development and the Role of Law in Johannesburg from 18 to 20 August 2002 as a parallel event to the World Summit on Sustainable Development. In all, 122 senior judges, including chief justices, from 59 countries representing all the world's regions attended the Symposium.
2. The Symposium deliberated on issues related to the role of the judiciary in sustainable development and the role of law and considered how the role of the judiciary in promoting the rule of law in sustainable development could be enhanced. Among the themes that the Symposium discussed were:
 - (a) Sustainable development and the role of law;
 - (b) National environmental governance and the role of law;
 - (c) Environmental justice;
 - (d) Human rights and the role of law;
 - (e) Role of the United Nations and other bodies in promoting the progressive development and national implementation of environmental law in the context of sustainable development;
 - (f) Strengthening of national judiciaries to meet the challenges of the twenty-first century in the area of environmental law in the context of sustainable development.
3. At its closing session, on 20 August 2002, the Symposium adopted the Johannesburg Principles on the Role of Law and Sustainable Development, which have been made available to the Governing Council in document UNEP/GC.22/INF/24.
4. In the follow-up to the Symposium, the United Nations Environment Programme (UNEP) will give priority to the implementation of the Johannesburg Principles. It is equally important for Governments to consider financing the implementation of the Principles. Working in consultation with a committee of judges, which met during the Symposium, UNEP prepared a work plan for the implementation of the Johannesburg Principles, including a capacity-building programme to enhance the role of judges in sustainable development. UNEP has invited inputs from Governments on the work plan. It is also seeking support in funding the capacity-building programmes for judges and other law enforcers in developing countries and countries with economies in transition.

II. ENHANCING THE APPLICATION OF PRINCIPLE 10 OF THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT, ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

5. In pursuance of principle 10 of the Rio Declaration on Environment and Development, UNEP has continued to promote access to information, public participation in decision-making and access to justice in environmental matters as tools for strengthening environmental governance. Recent UNEP work in this area included implementation of Governing Council decisions 20/4 and 21/24. In its decision 20/4, the Governing Council requested the Executive Director, in consultation with Governments and relevant international organizations, to seek appropriate ways of building capacity in and enhancing access to environmental information, public participation in decision-making and access to justice in environmental matters. The decision further requested the Executive Director to study various models of national legislation, policies and guidelines and to report to the Governing Council on the implementation of this decision. In order to

promote principle 10 of the Rio Declaration on Environment and Development, UNEP has been working with other United Nations bodies, particularly the Office of the High Commissioner for Human Rights and the United Nations regional commissions. UNEP undertook a study of various models of national legislation, policies and guidelines on access to information, public participation in decision-making and access to justice in three regions, namely Africa, Asia and the Pacific and Latin America and the Caribbean. UNEP, together with the United Nations Development Programme, the World Bank and a number of Governments, has joined the “Partnership for Principle 10” initiative of the World Resources Institute (WRI), which was launched as one of the type two initiatives of the World Summit on Sustainable Development. The Partnership aims to pursue common goals and processes in the implementation of principle 10 globally.

6. While decision 20/4 requested the conduct of a study covering mainly legal instruments at the national level, decision 21/24 requested a study on international legal instruments containing provisions on access to information or public participation or access to justice in environmental matters. By that decision, the Governing Council requested the Executive Director to continue to undertake appropriate actions designed to improve public access to information on environmental matters and environmental policy instruments and to promote the development of relevant skills and capacity of the key stakeholders and partners. The Council also requested the Executive Director to present a report on international legal instruments reflecting provisions contained in principle 10 of the Rio Declaration on Environment and Development, including an assessment and evaluation of their actual coverage vis-à-vis principle 10. The report was presented to the Governing Council/Global Ministerial Environment Forum at its seventh special session, held in Cartagena, Colombia, in February 2002.

7. Decision 21/24 is also important in that it urges Governments to take steps to enhance access to environmental information held by public authorities and to encourage participation by all relevant sectors of society in the decision-making process in environmental matters, in accordance with relevant legislation or arrangements, bearing in mind the crucial role which such information plays in institution-building for environmental protection and sustainable development. The decision further urges Governments to take measures to establish, where appropriate, at the national and regional levels, judicial and administrative procedures for legal redress and remedy for actions affecting the environment that may be unlawful or infringe rights under the law.

8. UNEP has finalized and widely disseminated the two studies as a capacity-building measure and undertaken other activities aimed at promoting principle 10 of the Rio Declaration. In the light of its experience in this regard, it is clear that it must now press forward in developing further ways and means of enhancing the application of principle 10 as a tool for improving and strengthening environmental governance. As envisaged in the Montevideo Programme III, a process might be initiated to investigate the need for and the feasibility of a new international instrument on access to information, public participation in processes leading to decision-making and access to judicial and administrative proceedings relating to environmental matters. The immediate results of such a process could be a set of non-binding global guidelines on access to information, public participation in decision-making and access to justice in environmental matters to further strengthen the institutional framework for environmental management. This process might require intergovernmental consultations convened under the auspices of UNEP.

III. SANITATION AND INTEGRATED WATER MANAGEMENT

9. The Plan of Implementation of the World Summit on Sustainable Development emphasized that the provision of clean drinking water and adequate sanitation is necessary to protect human health and the environment. The Plan sets out a commitment to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water and the proportion of people who do not have access to basic sanitation. Among the actions listed in the Plan, the integration of sanitation into water resources management strategies could be effectively implemented through a set of internationally agreed standards and practices that would facilitate international cooperation in this field. The development of international instruments or the use of the existing instruments for that purpose should be given due consideration. As

required in the Montevideo Programme III, UNEP will support the development of relevant instruments under the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities. Further details on this matter may be found in document UNEP/GC.22/2/Add.2.

IV. INTERNATIONAL REGIME ON BENEFIT-SHARING OF GENETIC RESOURCES

10. In response to the significant reduction in the current levels of biological diversity, the Plan of Implementation, recognizing the Convention on Biological Diversity as the key instrument in this field, envisages actions to promote the wide implementation of and continued work on the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, as an input to assist Parties to the Convention when developing and drafting legislative, administrative or policy measures on access and benefit-sharing, and contracts and other arrangements under mutually agreed terms for access and benefit-sharing. In this context, it anticipates the negotiation, within the framework of the Convention on Biological Diversity and having due regard to the Bonn Guidelines, of an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources. As required in the Montevideo Programme III, UNEP will support such an endeavour in consultation with the secretariat of the Convention on Biological Diversity and the Conference of the Parties. Further details on this subject may be found in document UNEP/GC.22/5.

V. LEGAL DIMENSION OF SUSTAINABLE PATTERNS OF PRODUCTION AND CONSUMPTION AND ENVIRONMENTALLY AND SOCIALLY RESPONSIBLE BEHAVIOUR

11. The Malmö Ministerial Declaration stressed the central importance of environmental compliance, enforcement and liability, and emphasized that all the actors involved must work together in the interest of a sustainable future. The globalizing trends in the world economy, with their attendant environmental risks and opportunities, necessitate the creation of an international institution, the adoption of new approaches and efforts to engage the major actors involved in globalization in new ways. Due emphasis must be placed on the role and responsibility of all the actors involved, in addressing the environmental challenges of the twenty-first century. A greater commitment by the private sector should be pursued, so as to engender a new culture of environmental accountability through the application of the polluter-pays principle, environmental performance indicators and reporting and the establishment of a precautionary approach in investment and technology decisions.

12. The positions taken by the Malmö Ministerial Declaration are further developed in the Montevideo Programme III, which requires UNEP to undertake targeted activities directed at the promotion of sustainable patterns of production and consumption and environmentally and socially responsible behaviour. UNEP actions envisaged in the Programme include studies on the effectiveness of existing regimes of civil liability as a means of preventing environmentally harmful activities and mitigating environmental damage, and the provision of expertise to States to enhance the effectiveness of such regimes. UNEP is required to undertake assessments of existing and emerging challenges to the environment, in order to identify gaps and weaknesses, including interlinkages and cross-cutting issues, in international law, to specify the role it should play in responding to those challenges and to promote the development and assess the effectiveness of voluntary codes of conduct and comparable initiatives that promote environmentally and socially responsible corporate and institutional behaviour, to complement domestic law and international agreements.

13. The Plan of Implementation of the World Summit on Sustainable Development¹ addresses the issue of sustainable patterns of production and consumption and environmentally and socially responsible behaviour (chapters III, V and X). Actions identified in those chapters which relate to the legal dimension of this issue are the following:

- (a) Identifying specific activities, tools, policies, measures and monitoring and assessment mechanisms, including, where appropriate, life-cycle analysis and national indicators for measuring progress;
- (b) Developing production and consumption policies to improve the products and services provided, while reducing environmental and health impacts, using, where appropriate, science-based approaches, such as life-cycle analysis;
- (c) Developing and adopting, where appropriate, on a voluntary basis, effective, transparent, verifiable, non-misleading and non-discriminatory consumer information tools;
- (d) Increasing investment in cleaner production and eco-efficiency in all countries through, among other measures, incentives and support schemes and policies directed at establishing appropriate regulatory, financial and legal frameworks;
- (e) Enhancing corporate environmental and social responsibility and accountability, including actions at all levels to encourage industry to improve social and environmental performance through voluntary initiatives, including environmental management systems, codes of conduct, certification and public reporting on environmental and social issues;
- (f) Actively promoting corporate responsibility and accountability, based on the Rio principles, including through the full development and effective implementation of intergovernmental agreements and measures, international initiatives, public-private partnerships and appropriate national regulations, and fostering the continuous improvement of corporate practices in all countries;
- (g) Encouraging the international community to promote corporate responsibility and accountability and to exchange best practices in sustainable development.

14. In pursuit of the goals of the Montevideo Programme III and the Plan of Implementation, a consultative process should be launched under the auspices of UNEP, involving Governments, relevant organizations and representatives of civil society organizations and major groups, for the development of an international code of conduct designed to develop and apply means in law and practice to promote sustainable patterns of production and consumption, as well as environmentally and socially responsible behaviour.

VI. STATUS OF CONVENTIONS AND PROTOCOLS IN THE FIELD OF THE ENVIRONMENT

15. This chapter of the report is submitted in response to Governing Council decision 24 (III) of 30 April 1975, which requested the Executive Director to inform the Council at each session of the status of new and existing conventions in the field of the environment, and to General Assembly resolution 3436 (XXX) of 9 December 1975, which requested the Governing Council to keep the General Assembly informed of any new conventions in that field and of the status of existing conventions. This chapter covers the period from 1 January 2001 to 20 October 2002. It is based on the information received by the UNEP secretariat from the relevant depositary Governments and organizations. Additional information on the subject will be found in document UNEP/GC.22/INF/12.

A. Conventions and protocols that have entered into force during the reporting period

16. The secretariat has been informed that the following instruments entered into force during the reporting period:

- (a) Agreement for the Establishment of the Regional Commission for Fisheries, approved by the FAO Council at its one hundred and seventeenth session (November 1999) in Rome, entered into force on 26 February 2001;

(b) Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area, adopted in Monaco on 24 November 1996, entered into force on 1 June 2001;

(c) Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, adopted in Vienna on 5 September 1997, entered into force on 18 June 2001;

(d) Agreement for the Establishment of the International Organization for the Development of Fisheries in Eastern and Central Europe, adopted in Copenhagen on 23 May 2000, entered into force on 12 October 2001;

(e) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in Aarhus, Denmark on 25 June 1998, entered into force on 30 October 2001;

(f) Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in New York on 4 August 1995, entered into force on 11 December 2001;

(g) Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Western Region, approved by the FAO Council at its one hundred and nineteenth session (November 2000) in Rome, entered into force on 25 February 2002;

(h) Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Beijing on 3 December 1999, entered into force on 25 February 2002.

B. New conventions and protocols concluded during the reporting period

17. The secretariat has been informed that the following instruments have been concluded during the reporting period:

(a) Agreement on the Conservation of Albatrosses and Petrels, adopted in Cape Town on 2 February 2001;

(b) Amendment to the Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Sofia on 27 February 2001;

(c) International Convention on Civil Liability for Bunker Oil Pollution Damage, adopted in London on 23 March 2001;

(d) Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, adopted in Windhoek on 20 April 2001;

(e) Stockholm Convention on Persistent Organic Pollutants, adopted in Stockholm on 22 May 2001;

(f) Convention on Safety and Health in Agriculture, adopted by the International Labour Conference at its 89th session, in Geneva on 21 June 2001;

(g) International Convention on the Control of Harmful Anti-fouling Systems on Ships, adopted in London on 5 October 2001;

(h) International Treaty on Plant Genetic Resources for Food and Agriculture, approved by the FAO Conference at its thirty-first session, in Rome, opened for signature on 3 November 2001;

(i) Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the North-East Pacific, adopted in Guatemala on 18 February 2002;

(j) Association of South- East Asian Nations Agreement on Transboundary Haze Pollution, adopted in Kuala Lumpur on 10 June 2002.

C. Conventions and protocols that have not entered into force

18. The following existing conventions and protocols have not entered into force yet (as of 20 October 2002) and require ratification or accession of the Governments and organizations that are eligible to become parties to those instruments in order to bring the respective instruments in force:

(a) Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted in Geneva on 22 September 1995;

(b) Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted in New York on 21 May 1997;

(c) Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted in Kyoto on 11 December 1997;

(d) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, adopted in Rotterdam on 10 September 1998;

(e) Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, adopted in London on 17 June 1999;

(f) Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, adopted in Basel on 10 December 1999;

(g) Cartagena Protocol on Biosafety to the Convention on Biological Diversity, adopted in Montreal on 29 January 2000;

(h) Stockholm Convention on Persistent Organic Pollutants, adopted in Stockholm on 22 May 2001.

VII. SUGGESTED ACTION BY THE GOVERNING COUNCIL

The Governing Council may wish to adopt a decision along the following lines.

Implementation of the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century

A. Implementation of the Johannesburg Principles

The Governing Council,

Recalling the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century and its decision 21/23 of 9 February 2001, which called on the Executive Director to promote the effective implementation of, compliance with and enforcement of environmental law, and towards this end to strengthen the capacity of various stakeholders, including members of the judiciary,

Recalling the six regional judges' symposiums on environmental law convened by the United Nations Environment Programme in collaboration with several partner agencies in Africa, south Asia, south-east Asia, Latin America and the Caribbean and the Pacific island States during the period 1996-2001, which laid a strong foundation for judicial capacity-building in the regions and which called on the United Nations Environment Programme to convene a global judges' symposium on the role of law and sustainable development,

Noting with appreciation the convening of the Global Judges' Symposium on the Role of Law and Sustainable Development in Johannesburg, South Africa, from 18 to 20 August 2002, with the participation of over 122 high-ranking judges from more than 60 countries around the world, and the adoption by them by acclamation of the Johannesburg Principles on the Role of Law and Sustainable Development as a contribution from the Global Judges' Symposium to the World Summit on Sustainable Development, and the presentation of the Johannesburg Principles to the Secretary-General of the United Nations by the Chief Justice of South Africa,

1. Takes note, with appreciation, of the report of the Executive Director on the Global Judges' Symposium on the Role of Law and Sustainable Development and the Johannesburg Principles on the Role of Law and Sustainable Development adopted at the Symposium;
2. Extends its deep appreciation to the Government of South Africa and the host of the Global Symposium, the Chief Justice of South Africa, for the excellent arrangements made for the successful conduct of the Symposium, and to the Executive Director for taking this important initiative;
3. Calls on the Executive Director to give priority, within the framework of the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century and within available resources, to effective implementation of the Johannesburg Principles with a view to mobilizing the full potential of the judiciaries around the world for the implementation and enforcement of environmental law, and promoting access to justice for the settlement of environmental disputes, public participation in environmental decision-making, the defence and enforcement of environmental rights, and public access to relevant information;
4. Calls on the Governments of developed countries and the donor community, including international financial institutions and foundations, to provide funding for the implementation of the Johannesburg Principles and the related programme of work;
5. Requests the Executive Director to report to the Governing Council, at its twenty-third session, on progress in the implementation of the present decision.

B. Enhancing the application of principle 10 of the Rio Declaration on Environment and Development

The Governing Council,

Recalling principle 10 of the Rio Declaration on Environment and Development, the Malmö Ministerial Declaration and its decisions 20/4 of 4 February 1999, 20/6 of 5 February 1999 and 21/24 of 9 February 2001,

Recalling the report of the Executive Director prepared in pursuance of decision 20/4 on the law and practice relating to access to information on the environment, public participation in processes leading to decision-making and access to judicial and administrative procedures relating to environmental matters, and the report on international instruments reflecting principle 10 of the Rio Declaration on Environment and Development, prepared in pursuance of decision 21/24, as presented to the Governing Council/Global Ministerial Environment Forum at its seventh special session,

1. Takes note, with appreciation, of the action taken by the Executive Director to provide policy and advisory services in key areas of institution-building in support of developing countries and countries with economies in transition;
2. Requests the Executive Director to intensify efforts in the provision of policy and advisory services in key areas of capacity and institution-building, including the promotion of public participation at the local and national levels in programme implementation and in support of efforts by Governments, in response to requests;
3. Requests the Executive Director to initiate an intergovernmental process for the preparation of global guidelines on access to information, public participation in decision-making and access to justice in environmental matters to strengthen further the institutional framework for environmental management;
4. Urges Governments to participate actively in the preparation of guidelines on access to information, public participation in decision-making and access to justice in environmental matters, and calls upon Governments in a position to do so to provide financial resources in support of the process, including support for participation of representatives from developing countries and countries with economies in transition;
5. Requests the Executive Director to submit a report to the Governing Council at its twenty-third session on the progress made in the preparation of the guidelines.

C. Legal dimension of sustainable patterns of production and consumption and environmentally and socially responsible behaviour

The Governing Council,

Recognizing the central importance of sustainable production and consumption patterns and of corporate environmental and social responsibility and accountability mechanisms and stressing that the development of sustainable production and consumption patterns and the enhancement and active promotion of corporate environmental and social responsibility and accountability are essential mechanisms to guarantee that all actors in our globalizing society are actively involved in and responsible for the achievement of sustainable development,

Recalling the Malmö Ministerial Declaration, which affirmed the central importance of environmental compliance, enforcement and liability and the role and responsibility of States and of all relevant actors and stressed that all actors involved must work together in the interest of a sustainable future; that the trends of globalization in the world economy, with the attendant environmental risks and opportunities, require international institutions to adopt new approaches and to engage the major actors involved in globalization in new ways; and that a greater commitment by the private sector should be pursued to engender a new culture of environmental accountability through the application of the polluter-pays principle, environmental performance indicators and reporting and the establishment of a precautionary approach in investment and technology decisions,

Taking note of the Johannesburg Declaration on Sustainable Development,² and in particular of its paragraph 29, which emphasizes the need for private sector corporations to enforce corporate accountability and for this to take place within a transparent and stable regulatory environment,

Taking note of the Plan of Implementation of the World Summit on Sustainable Development,³

Recalling the Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century, which confers a particular mandate on the United Nations Environment Programme,

Stressing the essential role that the United Nations Environment Programme can play in assisting Governments develop legal mechanisms designed to promote sustainable production and consumption patterns and to enhance and actively promote corporate environmental and social responsibility and accountability,

1. Requests the Executive Director, in consultation with Governments, to undertake activities directed at the development of an international code of conduct designed to develop and apply means in law and practice to promote sustainable patterns of production and consumption, as well as environmentally and socially responsible conduct, and to submit a report thereon to the Governing Council at its twenty-third session;

2. Decides to consider, at its twenty-third session, a further way forward for the development and subsequent implementation of the international code of conduct as well as further measures for the promotion of sustainable production and consumption patterns and of corporate environmental and social responsibility and accountability.

D. Status of international conventions and protocols in the field of the environment

The Governing Council,

Having considered the report of the Executive Director on international conventions and protocols in the field of the environment,⁴

Recalling its decision 24 (III) of 30 April 1975 and General Assembly resolution 3436 (XXX) of 9 December 1975,

1. Takes note of the report of the Executive Director;
2. Authorizes the Executive Director to transmit the report, on its behalf, together with any comments made by delegations thereon to the General Assembly at its fifty-eighth session, in accordance with resolution 3436 (XXX);
3. Calls on States that have not yet signed, ratified or acceded to conventions and protocols in the field of the environment to do so;
4. Calls also on States and organizations that are in a position to do so to provide the secretariat of the United Nations Environment Programme with information on new conventions and protocols in the field of the environment as well as information on any changes to the status of the existing conventions and protocols in the field of the environment.

¹ Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August - 4 September 2002 (United Nations publication, Sales No.E.03.11.A.1) chap. I, resolution 2, annex.

² Ibid., resolution 1, annex

³ Ibid., resolution 2, annex

⁴ UNEP/GC.22/3/Add.2 and INF/12.